APPENDIX

EXCERPTS FROM DEPOSITION OF PETITIONER OCTOBER 8, 1971

* * * * * * *

[3] Mr. Ballantine: I must confess that I don't remember everything that we talked about before, Mrs. Smith, but I do remember and want to reiterate that because these proceedings do relate criminal proceedings, you, of course, would have a right to remain silent and you have got a right under the rules of the Court of Appeals and the by-laws of the Bar Association to have counsel and you have a right to call witnesses, and we are in a pre-trial conference with an effort to try to facilitate the actual proceedings and you have a right to remain silent if you choose to, and as an attorney, of course, you're of your constitutional rights, and anything that you do say, we will be able to consider either for or against you, if you do choose to discuss the matter with us. And I think you understand all of that, do you not?

[4] The Witness: Yes I do.

* * * * * * *

[42] Mr. Spalding: Have you had anyone look at this for forgery as far as an expert is concerned?

A. I had Maxwell Allen look at this, $630 check to see if he could determine if that was my handwriting or not and he said he came down there to Hazard and examined it because of the quality of the [43] paper he said of the check he said that he could not testify one way or the other, and you know him, he's a very upright person and he wouldn't testify one way or the other, he wasn't sure, that is what he said to me now.

EXCERPTS FROM BRIEF OF PETITIONER MARCH 11, 1972

[8] Coupled with the medical condition of Respondent's late husband were the facts that he had access to Respondent's office and that he had acquired enough passable legal knowledge to be able to simulate or copy certain legal transactions, such as filling out a deed form. In addition, he was acquainted with the Administratrix of said estate and had worked with her in setting up displays for his employer, R. J. Reynolds Tobacco Company. Throughout the testimony of Mrs. Sallie Fugate before the Grand Jury, she constantly refers to "they", and Respondent surmises that this may have been her late husband and the Administratrix. If "they" could stage a wrongful taking of money on respondent's part, which would subject her to criminal indictment, and, likewise, if "they" could cast suspicion on Mrs. Fugate as to filing a fraudulent deed for recording and then removing same from the deed book, then respite against both parties could be achieved by this transaction. Testimony before the Grand Jury indicates that it was Mrs. Jones, the Administratrix, who discovered that the deed was missing (Grand Jury Record, page 23, Question 1 and Answer), and the Clerk does not recall Respondent being in the Record room around the time the deed was taken (Grand Jury Record, page 42). Respondent could be a victim of said transaction as much as Mrs. Fugate.

[LETTERHEAD OF FRANK CORYELL]

November 18, 1971
Judith Ward Smith, Esquire
Attorney at Law
611 Highland Drive
Bowling Green, Kentucky

In Re: Kentucky Bar Association v. Smith

Dear Mrs. Smith:

In view of the fact that Mr. Maxwell Allen was named by you as examining the checks material to the action in which you entered a Plea, it is my feeling that it will be helpful to the Trial Committee to know exactly what his examination did or did not show.

Therefore, I am again requesting your authorization to take Mr. Allen's deposition. To be very honest with you, I feel that Mr. Allen's testimony will be contrary to that given by you before the Trial Committee. If you feel you should not so authorize Mr. Allen I will pursue the enclosed request to the Trial Committee to direct Mr. Allen to do so.

Respectfully,

FRANK CORYELL
FC:ft
Enclosure

cc: Durward Maynard
Chairman of Trial Committee
601 Louisville Trust Bldg.
Louisville, Kentucky

611 Highland Drive
Bowling Green, Kentucky
November 29, 1971

Hon. Frank Coryell
Attorney at Law
305 Kentucky Home Life Building
239 S. Fifth Street
Louisville, Kentucky 40202

Dear Mr. Coryell:

In light of your letter and its innuendo, I consent to the taking of Mr. Allen's testimony by deposition. I would appreciate it if the deposition is set sometime after January 1st, if this is convenient with you.

Very truly yours,

/s/ JUDITH W. SMITH
Judith Ward Smith

JWS
cc: Hon. Durward W. Maynard

COURT OF APPEALS OF KENTUCKY

KENTUCKY STATE BAR ASSOCIATION - - *Complainant*

v.

JUDY WARD SMITH - - - - - - - *Respondent*

MOTION

Comes now the Respondent, Judy Ward Smith, and moves the Court to accept herein the Brief she filed before the Trial Committee on March 11, 1972, as her Reply to the Brief filed by counsel for Complainant on September 18, 1972.

In support of said Motion, Respondent states that she can add nothing further to the contentions advanced in the Brief described above, except to distinguish by attachment hereby filed with this Motion, the case of *Kentucky State Bar Association* v. *Lester*, 437 S. W. 2d 958 (1968), cited by Complainant in said Brief, from the case at bar; that, due to lack of funds, Respondent is unable to file a Reply Brief before this Court at this time.

In the event that the Court should sustain Respondent's Motion, Respondent asks that the Court note one correction to said Brief. On Page 5 of said Brief, filed on March 11, 1972, the reference to RCA 3.230 should be corrected to RCA 3.190.

WHEREFORE, in order to represent Respondent's interests fairly before the Court, she petitions the Court to sustain this Motion.

(s) Judy Ward Smith
Respondent
7671 Juliette Low Drive
Huntington Beach, California 92647

Dated: November 16, 1972

EXCERPT FROM ATTACHMENT TO THE BRIEF IN COURT OF APPEALS

Second, Respondent believes that *Kentucky State Bar Association* v. *Lester, supra,* page 960, is distinguishable because the Bar Association:

> ". . . did *not* undertake its disciplinary proceeding *on the basis of conviction of crime,* but upon the *basis of such gross unprofessional conduct* as demonstrated the respondent's lack of integrity and moral character requisite for his continuing as a practicing Kentucky lawyer." (Emphasis Added.)

It would seem that the Committee applies a similar but significantly different test to misdemeanor convictions. The reason for bringing such a Kentucky practitioner before a Trial Committee must be greater than conviction of a misdemeanor itself. The attorney must manifest his unfitness to practice law by gross misconduct. In other words, conviction of a misdeanor [sic] by itself is not enough to warrant discipline. Unless the misdemeanor is done with deliberate and conscious intent, it seems reasonable that such offense should not be grounds for disbarment as in the *Lester* instance.

The inquiry must be: did Respondent deliberately act to cause the commission of the charged offense? Respondent has acted in every way she possibly could conceive to establish the lack of fraudulent intent on her part. (See Page 5 and Page 12 of Respondent's Brief, filed on March 11, 1972.)

Respectfully Submitted,
(s) Judy Ward Smith
Respondent
7671 Juliette Low Drive
Huntington Beach, California 92647

Dated: Nov. 16, 1972